

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

RICHARD AND DORRIS MILLER,	)	
	)	
Plaintiff,	)	
	)	Case No. 20 CV 06171
vs.	)	
	)	
VILLAGE OF MAYWOOD and POLICE	)	
OFFICERS DONNA LEWIS, MICHAEL	)	
BABICZ, DSHAUN BOLDEN, NOLAN,	)	
And UNKNOWN OFFICERS,	)	
	)	
Defendants.	)	

**DEFENDANTS’ MOTION TO RECONSIDER THE MARCH 2, 2021 ORDER DENYING  
MOTION TO DISMISS PLAINTIFFS’ COMPLAINT**

NOW COME the Defendants, VILLAGE OF MAYWOOD (“Village”) and POLICE OFFICERS DONNA LEWIS, MICHAEL BABICZ, DSHAUN BOLDEN AND NOLAN (collectively the “Officers”) (collectively the “Defendants”), by and through their attorneys, KLEIN, THORPE, AND JENKINS, LTD., and as its Motion to Reconsider the March 2, 2021 Order Denying Motion To Dismiss Plaintiffs’ Complaint pursuant to Federal Rules of Civil Procedure 60, states as follows:

**I. BACKGROUND**

On January 12, 2021, the Defendants filed a Motion to Dismiss Plaintiffs’ Complaint which also included a request to stay the district court proceedings pending resolution of the state court criminal proceedings. (Doc. 16-17). This Motion was fully briefed and the Court heard oral argument on this Motion on March 2, 2021. At the March 2, 2021 hearing, this Court denied the Village’s Motion in its entirety including the request to stay the proceedings. The Defendants

now bring a Motion to Reconsider this Court's March 2, 2021 Order denying the request to stay the district court proceedings pending resolution of the state court criminal proceedings only.

## II. ARGUMENT

Pursuant to Federal Rules of Civil Procedure 60(b), a court may relieve a party from an order for: "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); ...(6) any other reason that justifies relief." F.R.C.P. 60(b). Under Illinois law, a motion to reconsider a prior ruling of the Court is properly brought when (1) the movant presents new facts, (2) new legal authority, *or* (3) when the Court errs in its application of the law. *Stringer v. Packaging Corporation of America*, 351 Ill. App. 3d 1135, 1140 (4th Dist. 2004). The decision as to whether to grant a motion to reconsider is within the trial court's discretion. *Greer v. Yellow Cab Co.*, 221 Ill. App. 3d 908, 915 (1st Dist. 1991). As indicated below, this Court should grant the Defendants' motion to reconsider, as the Court erred in its application of the law.

First and importantly, at the March 2, 2021 hearing, the Court based its decision to deny the stay at least in part on the Plaintiffs' representation that they were not claiming a wrongful conviction or malicious prosecution. This is in fact not the case and the Complaint does contain a count for malicious prosecution. The following exchange took place at the hearing:

THE COURT: Well, I think, and the Seventh Circuit has said, that Fourth Amendment claims -- that Fourth Amendment claims are not barred by the principal of Heck versus Humphrey, and I am quoting Judge Posner, and he added, As such claims rarely are. It was about a different claim.

***But as far as -- in as far as you are not claiming a wrongful conviction, like malicious prosecution, which I don't think you are --***

MR. ADAMS: ***That is correct, Your Honor.***

THE COURT: (Continuing) -- *then the case can go forward, it isn't barred by Heck.*

**Transcript of March 2, 2021 Hearing**, attached as **Exhibit A** at pg. 5 (emphasis added). A review of the Complaint (Doc. 3), however, clearly shows that Count X is a claim for Malicious Prosecution. Therefore, this Court based its decision not to stay the proceedings on a misreading of the Complaint along with a misrepresentation from Plaintiffs' counsel at the hearing.

Further, Plaintiffs do not dispute that there are active criminal cases pending which directly relate to and impact this civil matter. Plaintiffs' attorney actually admits at the March 2, 2021 hearing that the pending criminal case is at least "tied to the false arrest claim." **Exhibit A** at pg. 5. In reality, at least five (5) of the eleven (11) counts are directly tied to the pending criminal case. These counts include: Count I – Section 1983 Action (Illegal Seizure); Count IV – Section 1983 Action (Illegal Search); Count V – Section 1983 Action (False Arrest); Count VII – Section 1983 Action (Conspiracy to Deprive Constitutional Rights); and Count X – Malicious Prosecution.

Defendants seek a stay of the present case pursuant to the abstention doctrine announced in *Younger v. Harris*, 401 U.S. 37 (1971), and its progeny. *Younger* abstention applies here, because adjudication of Plaintiffs' federal claims would necessarily involve adjudication of the identical issues in dispute in his state criminal proceedings. *See Id.*; *Fuery v. City of Chicago*, No. 07 C 5428, 2008 WL 4874055, \*3 (N.D. Ill. June 18, 2008) (*citing Simpson*, 73 F.3d at 135). *See, also, Gakuba v. O'Brien*, 711 F.3d 751, 751 (7th Cir. 2013) (federal claims arising from illegal searches, seizures and detentions involve constitutional issues that a criminal defendant has the ability to litigate during the course of the state criminal case); *see, also, Blanchard v. Weis*, 09 C 1749, 2013 WL 3287115, \*1-2 (N.D. Ill. June 24, 2013) (granting defendants' motion

to stay while plaintiff's criminal case was pending on direct appeal before the state appellate court).

A finding on the issues alleged here, that Plaintiffs' constitutional rights were violated through the illegal searches and seizures, and that he was falsely arrested, conspired against, and his prosecution was malicious, would directly interfere with Plaintiff's criminal case for aggravated fleeing and eluding, possession of a stolen motor vehicle, resisting arrest and so forth, in which he raises the identical issues.

Additionally, if the criminal cases result in conviction, that decision may have a preclusive effect on the civil rights claims alleged in the instant case. A § 1983 plaintiff cannot obtain damages in circumstances where the actual relief sought necessarily impugns the validity of a criminal conviction. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Specifically, *Heck* holds that "in order to recover damages for allegedly unconstitutional conviction or imprisonment or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a plaintiff must prove that the conviction or sentence has been reversed on appeal . . . ." *Heck* at 486-87. Simply put, Plaintiff cannot file a civil action in which judgment in his favor would imply the invalidity of a criminal conviction. *Id.*

Under these circumstances, a stay of the district court proceedings based on abstention principles is appropriate. Plaintiffs presented no valid arguments either in their response brief or at the March 2, 2021 as to why either the *Younger* abstention doctrine or *Heck* does not apply in this case. Respectfully, Defendants believe that this Court misapplied the law and precedent set by *Younger* and *Heck* which clearly indicate that a stay is appropriate given the pending criminal case which directly relates to and impacts this civil matter.

**WHEREFORE**, the Defendants, VILLAGE OF MAYWOOD and POLICE OFFICERS DONNA LEWIS, MICHAEL BABICZ, DSHAUN BOLDEN AND NOLAN respectfully request that this Honorable Court reconsider its March 2, 2021 Order and enter an Order staying the district court proceedings pending resolution of the state court criminal proceedings and for further relief as may be equitable and just.

Respectfully submitted,

VILLAGE OF MAYWOOD, POLICE  
OFFICERS DONNA LEWIS, MICHAEL  
BABICZ, DSHAUN BOLDEN AND  
NOLAN

By: /s/ Caitlyn R. Culbertson  
One of their attorneys

Howard Jablecki ([hcjablecki@ktjlaw.com](mailto:hcjablecki@ktjlaw.com))  
Anthony G. Becknek ([agbecknek@ktjlaw.com](mailto:agbecknek@ktjlaw.com))  
Caitlyn Culbertson ([crculbertson@ktjlaw.com](mailto:crculbertson@ktjlaw.com))  
KLEIN, THORPE AND JENKINS, LTD.  
20 North Wacker Drive, Suite 1660  
Chicago, Illinois 60606  
(312) 984-6400

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

RICHARD MILLER, et al.,  
Plaintiffs,

vs.

VILLAGE OF MAYWOOD, et al.  
Defendants.

Case No. 20 CV 06171

Chicago, Illinois  
March 2, 2021  
11:13 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - HEARING  
BEFORE THE HONORABLE JOAN H. LEFKOW

APPEARANCES:

For the Plaintiffs:

LAW OFFICE OF JARRETT ADAMS, PLLC  
MR. JARRETT ADAMS  
40 Fulton Street  
New York, New York 10038  
646-880-9707  
jadams@jarrettadamsllaw.com

For the Defendants:

KLEIN, THORPE & JENKINS, LTD.  
MS. CAITLYN RAE CULBERTSON  
20 North Wacker Drive  
Chicago, Illinois 60606  
312-984-6400  
crculbertson@ktjlaw.com

Court Reporter:

FEDERAL OFFICIAL COURT REPORTER  
MS. KRISTA BURGESSON  
219 South Dearborn Street  
Chicago, Illinois 60604  
312-435-5567  
krista\_burgesson@ilnd.uscourts.gov

10:44:16

10:44:16

10:44:19

10:44:19 1 THE CLERK: 20 C 6171, Miller versus Village of  
11:13:59 2 Maywood Police.

11:14:01 3 Each party please speak your name one at a time for  
11:14:01 4 the record and also each time before you speak, starting with  
11:14:06 5 plaintiff.

11:14:06 6 MR. ADAMS: Good morning, Your Honor. Attorney  
11:14:08 7 Jarrett Adams.

11:14:08 8 THE COURT: Good morning.

11:14:18 9 MS. CULBERTSON: Good morning, Your Honor. Caitlyn  
11:14:20 10 Culbertson on behalf of the defendants.

11:14:25 11 THE COURT: Good morning.

11:14:26 12 And again, sorry to keep you waiting. I was focused  
11:14:31 13 on something else and let the time go by.

11:14:37 14 So have you done any discovery in this case?

11:14:40 15 MR. ADAMS: We have not, Your Honor.

11:14:44 16 Right now pending and before the Court is a motion to  
11:14:48 17 dismiss.

11:14:49 18 THE COURT: Right, and I did have a question, a  
11:14:56 19 couple of questions about that, but you haven't done any like  
11:15:01 20 Rule 16 conference or anything waiting for a decision on this  
11:15:06 21 motion; is that right?

11:15:08 22 MR. ADAMS: Yeah, Your Honor.

11:15:11 23 And defense counsel, you guys can speak up if I am  
11:15:14 24 misstating anything, you know, but this case also involves an  
11:15:19 25 underlying criminal matter. That matter was initially

11:15:24 1 dismissed and we brought suit, and after bringing suit, the  
11:15:31 2 charges were re-filed. So defendants filed a motion to  
11:15:34 3 dismiss to, you know, basically say that the criminal matter  
11:15:38 4 should be resolved before we move forward. And of course,  
11:15:42 5 Your Honor, we disagree, we want to proceed with discovery,  
11:15:46 6 but I didn't want to do anything to have to be stopped in the  
11:15:51 7 middle.

11:15:51 8 And again, defense counsel, if I am stating anything  
11:15:53 9 wrong, you can just jump in.

11:15:55 10 MS. CULBERTSON: Of course.

11:15:57 11 We did file a motion to dismiss, or in the  
11:16:01 12 alternative, to stay the proceedings. There is a -- as  
11:16:03 13 plaintiffs' counsel pointed out, and we would agree with some  
11:16:06 14 of what he said, there is an underlying criminal proceeding.  
11:16:11 15 I think the timeline that the plaintiffs' counsel is setting  
11:16:17 16 forth is not necessarily accurate as we state in our reply  
11:16:22 17 brief. But because there is an underlying criminal case that  
11:16:30 18 directly involves the issues in this matter, we have asked for  
11:16:30 19 a stay of the proceedings, or in the alternative, if this  
11:16:33 20 Court were to outright dismiss the case.

11:16:38 21 THE COURT: Well, I am curious, the case was  
11:16:42 22 dismissed on May -- and in whatever year that was, 2019 or  
11:16:46 23 2020.

11:16:48 24 Why was it dismissed? And why could it be brought  
11:16:52 25 again?



11:16:53 1 MR. ADAMS: Well, I --

11:16:53 2 MS. CULBERTSON: Your Honor --

11:16:53 3 I'm sorry, Go ahead.

11:17:00 4 MR. ADAMS: Okay.

11:17:00 5 I was paying particularly close attention to the  
11:17:03 6 criminal matter as it was being adjudicated by defense  
11:17:08 7 counsel, Attorney Brandon Brown. They proceeded through, you  
11:17:13 8 know, the -- they asked for, you know, a speedy trial of the  
11:17:17 9 matter, and the State's Attorney's Office just Nolle'd the  
11:17:23 10 case, they dismissed it.

11:17:25 11 We found it interesting, Your Honor, that right after  
11:17:28 12 them dismissing and us getting in contact with, you know, the  
11:17:33 13 defendants in this matter, and basing complaints and bringing  
11:17:39 14 ourselves to filing this complaint, you know, then the charges  
11:17:41 15 are re-filed.

11:17:43 16 There is no -- we can't -- I would only be  
11:17:45 17 speculating, Your Honor, you know, if I guessed why they were  
11:17:49 18 re-filed. My client would like to argue that they were  
11:17:52 19 re-filed because of continued harassment. I am sure defense  
11:17:57 20 counsel would deny that. But Your Honor, I don't have  
11:17:59 21 anything definitive.

11:18:02 22 THE COURT: So it was denied for violation of the  
11:18:05 23 Speedy Trial Act, which would have been a denial without  
11:18:08 24 prejudice.

11:18:08 25 MR. ADAMS: Uh-huh.

11:18:09 1 THE COURT: So it sounds like lawfully at least one  
11:18:12 2 theory would be that it just required the prosecutor to go  
11:18:16 3 back to the Grand Jury and reinstate the charges, but my --  
11:18:25 4 well, what is the current status of that case? That is my  
11:18:29 5 next question.

11:18:29 6 MS. CULBERTSON: Your Honor --

11:18:31 7 MR. ADAMS: Right now, and I just spoke with the  
11:18:34 8 client today, right now it is going through the same process  
11:18:38 9 again where he has been charged, he is having initial court  
11:18:44 10 appearances, and there has been no discovery in that matter at  
11:18:48 11 all, and we just feel like that case is -- it is not tied to  
11:18:54 12 the entire claims in our complaint, it is tied to the false  
11:18:58 13 arrest claim, but we also have an excessive force claim as  
11:19:02 14 well, and we really feel like discovery should proceed.

11:19:05 15 THE COURT: Well, I think, and the Seventh Circuit  
11:19:10 16 has said, that Fourth Amendment claims -- that Fourth  
11:19:16 17 Amendment claims are not barred by the principal of Heck  
11:19:19 18 versus Humphrey, and I am quoting Judge Posner, and he added,  
11:19:27 19 As such claims rarely are. It was about a different claim.  
11:19:32 20 But as far as -- in as far as you are not claiming a wrongful  
11:19:40 21 conviction, like malicious prosecution, which I don't think  
11:19:43 22 you are --

11:19:44 23 MR. ADAMS: That is correct, Your Honor.

11:19:46 24 THE COURT: (Continuing) -- then the case can go  
11:19:52 25 forward, it isn't barred by Heck.

11:19:59 1 If any -- if down the road you are convicted then --  
11:20:05 2 and I don't know that that is underlying anything in your  
11:20:08 3 case, that possibly would make your client less credible in  
11:20:12 4 some manner, but other than that, I don't know.

11:20:16 5 So my thought would be to deny the motion to dismiss  
11:20:20 6 under Rule 12(b)(6), and you folks go ahead and litigate your  
11:20:25 7 case.

11:20:30 8 So let's set it over for two weeks.

11:20:32 9 MS. CULBERTSON: Your Honor, you are denying the  
11:20:34 10 motion in its entirety?

11:20:35 11 MR. ADAMS: That is what it sounds like.

11:20:37 12 THE COURT: That is --

11:20:39 13 MS. CULBERTSON: I was clarifying.

11:20:40 14 Thank you.

11:20:41 15 THE COURT: Under the Federal Rules, you don't have  
11:20:44 16 to seek causes of action, or you don't have to seek -- I know  
11:20:50 17 you made issues about group -- group pleading, and so on, but  
11:20:58 18 in the description of the facts, it sounds like these officers  
11:21:05 19 were acting together at all times, and so it seems to me that  
11:21:09 20 discovery will fill out what needs to be specified.

11:21:14 21 But it is clear that your clients, the defendant  
11:21:18 22 officers, are well advised of what they are being -- not being  
11:21:30 23 charged, but being complained about. So I would not accept  
11:21:30 24 that argument.

11:21:33 25 Now, there is one about the FOIA case and a

11:21:35 1 conspiracy, and I will just let those ride for now, but I want  
11:21:40 2 you to get the case moving. Maybe it would be appropriate for  
11:21:51 3 summary judgement down the road, but I will deny the motion to  
11:21:55 4 dismiss.

11:21:55 5 MS. CULBERTSON: I would also -- I just want to -- I  
11:21:56 6 know plaintiffs' counsel has had a chance to speak as to -- I  
11:22:02 7 would just like to reiterate to Your Honor that the charges  
11:22:04 8 were brought and there was, you know, a true bill returned by  
11:22:09 9 a Grand Jury prior to the filing of this complaint, and under  
11:22:13 10 the -- we think this squarely fits in with the Younger  
11:22:17 11 doctrine that that ruling in this case could directly impact  
11:22:24 12 the criminal proceedings, and we just strongly believe that a  
11:22:28 13 stay would be appropriate in this matter.

11:22:30 14 They are the same as the charges that are pending in  
11:22:33 15 the criminal proceedings. They are exactly the same, you  
11:22:40 16 know, charges that were brought pursuant to the dates and the  
11:22:49 17 incidents that are at issue and that are proceeding.

11:22:49 18 I know Your Honor does not sound like you are  
11:22:51 19 inclined to grant the stay, but I just wanted to make sure  
11:22:54 20 that I was -- that I got a chance to speak and just to make  
11:22:59 21 sure our arguments were clear.

11:23:01 22 THE COURT: Okay then.

11:23:02 23 So that is my view. You know, I don't want to get  
11:23:06 24 hung up on writing a lengthy opinion on this because at least  
11:23:12 25 part of these claims can go forward. I am not suggesting

11:23:18 1 anything about the merits of the allegations, but I will give  
11:23:23 2 you a two-week -- I will give you two weeks to have your Rule  
11:23:29 3 16 conference and then file a proposed scheduling order.

11:23:38 4 So let me put it on the calendar for Wednesday the --  
11:23:47 5 what is it, the 17th, I think? Wednesday the 17th. But if  
11:23:52 6 you get a scheduling order in before that date, I will move  
11:23:56 7 that status date out.

11:23:57 8 MS. CULBERTSON: Okay.

11:23:57 9 MR. ADAMS: Thank you, Your Honor.

11:24:00 10 THE COURT: Okay.

11:24:01 11 So Amanda, can you give us a time then on that court  
11:24:07 12 call?

11:24:08 13 THE CLERK: Yes, Judge.

11:24:10 14 On the 17th, I believe you are doing the Ninth  
11:24:15 15 Circuit stuff, so maybe we can do the week after, March 24th  
11:24:17 16 at 9:30.

11:24:19 17 THE COURT: All right.

11:24:23 18 So try to get the order in before that date.

11:24:27 19 MR. ADAMS: All right.

11:24:29 20 Thank you again, Your Honor.

11:24:30 21 THE COURT: You are welcome.

11:24:32 22 MS. CULBERTSON: Thank you, Your Honor.

23 (Proceedings concluded.)

24

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

/s/Krista Burgeson, CSR, RMR, CRR      March 12, 2021  
Federal Official Court Reporter      Date